

)	
W.H., Appellant)	
)	
and)	Docket No. 18-0004
)	Issued: May 3, 2018
DEPARTMENT OF JUSTICE BUREAU OF)	
PRISONS, Fort Dix, NJ, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 2, 2017 appellant, through counsel, filed a timely appeal from an August 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish right carpal tunnel syndrome, right trigger finger, and right ulnar nerve neuropathy causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On September 29, 2016 appellant, then a 37-year-old correctional officer, filed an occupational disease claim (Form CA-2) alleging that he developed right carpal tunnel syndrome and right trigger finger as a result of overusing his hand in the performance of his federal employment duties. He reported that he had worked as a correctional officer from November 25, 2007 and his duties included opening locks to gates, gripping and pulling doors weighing approximately 600 to 800 pounds, and using a set of 20 to 30 keys which were very heavy. Appellant reported that on March 7, 2016 he was assigned to the mailroom and his duties entailed opening hundreds of envelopes which required constant twisting and bending of his right wrist. He complained of right hand pain which was later identified to be carpal tunnel syndrome. Appellant reported that he first became aware of his condition and its relationship to his federal employment on September 8, 2016.³ He did not stop work.

In a September 8, 2016 diagnostic report, Dr. Mark Dimarcangelo, a Board-certified diagnostic radiologist, reported that an x-ray of the right hand revealed no acute osseous pathology.

In a September 8, 2016 medical report, Dr. Jason Wong, a Board-certified orthopedic surgeon, reported that appellant presented for evaluation of his right ring finger with complaints of numbness and tingling over the median and ulnar nerve distributions. He reported difficulty with his right ring finger since his right elbow injury. Dr. Wong noted that appellant had been working light duty in the mailroom which was causing him discomfort in his hand. He provided physical examination findings and reviewed the results of the right hand x-ray. Dr. Wong diagnosed trigger finger of the right finger most likely an overuse tendinitis which was exacerbated by his light-duty work in the mailroom. He also diagnosed carpal tunnel syndrome to the right upper extremity which may also have been caused by an exacerbation of repetitive motion use at work. Dr. Wong noted ulnar nerve neuropathy, etiology unknown, which he opined could also be due to overuse of the right upper extremity at work. He recommended electromyography (EMG) and nerve conduction velocity (NCV) testing.

In a September 27, 2016 diagnostic report, Dr. Salvatore Russomano, Board-certified in physical medicine and rehabilitation, reported that an EMG/NCV study revealed abnormal findings. He noted electrical evidence of carpal tunnel syndrome on the right which was mild-to-moderate given the abnormal medial nerve conduction studies. Dr. Russomano further reported no electrical evidence of axon loss given the normal needle findings in the right abductor pollicis brevis musculature.

³ The Board notes that the record reflects five other traumatic injury claims with a date of injury ranging from June 17, 2008 to July 7, 2015. The record before the Board contains no other information pertaining to these claims.

In an October 6, 2016 report, Dr. Wong reported that appellant complained of pain and worsening discomfort in his right hand over several months prior to his September 8, 2016 evaluation. He reviewed the EMG/NCV findings which revealed mild-to-moderate right carpal tunnel syndrome. Dr. Wong diagnosed trigger finger of the right finger exacerbated by light-duty work from repetitive motion in the mailroom and right upper extremity carpal tunnel syndrome which was a repetitive motion type of injury that occurred most likely from working in the mailroom. He noted that he believed that appellant had early ulnar nerve neuropathy due to a repetitive motion type of injury from working in the mailroom, although the diagnosis was not confirmed by EMG testing.

By development letter dated November 4, 2016, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed. He was afforded 30 days to submit the necessary evidence.

In a November 14, 2016 narrative statement, appellant responded to OWCP's questionnaire and described his employment duties as a correctional officer. He reported that the repetitive movements from holding heavy keys and turning locks all day, as well as pushing and pulling heavy gates and doors, caused his hand and wrist great discomfort. In March 2016, appellant was placed on light-duty assignment in the mailroom per his physician's restrictions. However, his repetitive employment duties in the mailroom caused his right hand condition to worsen, causing him to seek treatment with Dr. Wong on September 8, 2016. Appellant reported that he was required to use a letter opener to open hundreds of envelopes in the mailroom, causing him to bend and twist his wrist. He believed that this repetitive motion caused his right hand carpal tunnel and trigger finger. Appellant reported a prior micro surgery to the right index finger when he was five years old. He further reported bruising and contusion to his right elbow from a work-related fall down the stairs on December 21, 2014 which turned into bursitis and enthesopathy of the elbow region.

By decision dated December 23, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted federal employment factors.

On January 3, 2017 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In support of his claim, appellant submitted a December 15, 2016 medical narrative report from Dr. Wong. Dr. Wong reported that he initially evaluated appellant on March 17, 2016 at which time he was status post debridement of the right lateral epicondyle secondary to chronic lateral epicondylitis. Appellant was on light duty and reported that he had developed some pain and discomfort to the right ring finger and still had weakness to his right upper extremity from the surgery. Aside from appellant's right elbow surgery, Dr. Wong opined that appellant had a new onset of trigger finger of the right ring finger. He continued to evaluate appellant postoperatively for the right elbow and on April 28, 2016, noted further complaints of locking the right ring finger with pain. Appellant reported that, on that date, he was performing light-duty work in the mailroom which required opening boxes and mail with a razor blade, causing his finger to lock. Dr. Wong discussed appellant's subsequent evaluations for right hand and wrist complaints and noted that EMG testing revealed mild-to-moderate carpal tunnel syndrome. He diagnosed right

carpal tunnel syndrome, right trigger finger of the ring finger, and right ulnar nerve neuropathy and he related that all three diagnoses were due to repetitive motion and it was well documented in medical literature that repetitive motion does cause these problems. Dr. Wong opined within a reasonable degree of medical certainty that appellant had developed the above diagnoses due to the repetitive motion required for his activities at work which was consistent with the above diagnoses and repetitive type of injury.

A hearing was held on July 10, 2017, during which appellant testified in support of his occupational disease claim. He again related the factors of employment he believed caused his diagnosed conditions. The record was held open for 30 days. No other evidence was received.

By decision dated August 23, 2017, OWCP's hearing representative affirmed the December 23, 2016 decision, finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted federal employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish that appellant developed right carpal tunnel syndrome, right trigger finger, and right ulnar nerve neuropathy causally related to the accepted factors of his federal employment as a correctional officer.

In support of his claim, appellant submitted medical reports dated September 8 through December 15, 2016 from Dr. Wong, his treating physician. Dr. Wong diagnosed right carpal tunnel syndrome, right trigger finger of the ring finger, and right ulnar nerve neuropathy. He opined that appellant's diagnoses were causally related to his repetitive employment duties as a correctional officer. The Board finds that the opinion of Dr. Wong is not well rationalized.

Dr. Wong reported that he evaluated appellant on March 17, 2016 at which time he was status post debridement of the right lateral epicondyle secondary to chronic lateral epicondylitis. Appellant was on light duty and reported complaints of pain and discomfort to the right ring finger, which Dr. Wong speculated was a new onset of trigger finger. The Board notes that Dr. Wong failed to provide a detailed medical history pertaining to appellant's right upper extremity conditions, only briefly noting a prior right elbow surgery. While Dr. Wong noted the right lateral epicondyle secondary to chronic lateral epicondylitis, he never addressed what caused the underlying condition and need for surgery, nor did he discuss whether this preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹⁰ Given appellant's complaints pertaining to the right ring finger following his elbow surgery, Dr. Wong's medical reports failed to provide a fully comprehensive opinion on causal relationship as he never addressed why appellant's right trigger finger was not related to his right elbow injury and surgery given that his complaints began postoperatively. A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.¹¹ As such, Dr. Wong's reports lack the specificity and detail needed to establish that appellant's injuries are a result of a work-related occupational exposure.¹²

Dr. Wong also noted that EMG testing revealed right carpal tunnel syndrome, diagnostic studies failed to provide support for right ulnar nerve neuropathy diagnosis. His opinion on causation regarding these conditions is highly vague and speculative as he noted that appellant's right carpal tunnel syndrome, right trigger finger of the ring finger, and right ulnar nerve neuropathy were due to repetitive motion because they were repetitive type injuries. To be of

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹¹ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹³ While Dr. Wong had some understanding of appellant's employment duties, his statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim, namely, how repetitive pushing, pulling, grasping, turning, and opening mail would cause or aggravate appellant's right hand injuries.¹⁴ His general assertion that the given diagnoses are repetitive type injuries is insufficient to establish a work-related occupational disease. Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to his diagnosed conditions, Dr. Wong's opinion on causal relationship is equivocal in nature and of limited probative value.¹⁵

The remaining medical evidence of record is also insufficient to establish appellant's occupational disease claim. Dr. Dimarcangelo and Dr. Russomano's diagnostic reports only interpreted imaging studies and provided no opinion on the cause of appellant's injury.¹⁶ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁷ Without any mention of the repetitive employment duties, any findings made could not be related to his claim to establish causal relationship.¹⁸

The Board notes that there is no requirement that the federal employment be the only cause of appellant's injury. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, he is entitled to compensation.¹⁹ However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²⁰ Appellant's honest belief that his occupational employment duties caused his medical injury, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship.²¹

The Board finds that the case record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties as a correctional officer and his diagnosed right hand conditions. Thus, appellant has not met his burden of proof.

¹³ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁴ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁵ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁶ *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁷ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁸ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹⁹ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

²⁰ *D.D.*, 57 ECAB 734 (2006).

²¹ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right carpal tunnel syndrome, right trigger finger of the ring finger, and right ulnar nerve neuropathy causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 23, 2017 is affirmed.

Issued: May 3, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board